

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

RYAN MCNEAL, INDIVIDUALLY AND §
ON BEHALF OF ALL OTHERS §
SIMILARLY SITUATED; § CIVIL ACTION NO. 6:16-CV-01118-RWS

Plaintiff,
§
v.
§
MARKUM ENTERPRISES, LLC, ET AL., §

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendations regarding Defendant's Motion to Dismiss (Docket No. 12), Plaintiff's Motion to Certify Class (Docket No. 7), and Plaintiff's Motion for Approval and Distribution of Notice for Disclosure of Contact Information (Docket No. 8), has been presented for consideration. The Report and Recommendation (Docket No. 41), filed on August 29, 2017, recommends denying Defendant's Motion to Dismiss (Docket No. 12) and denying without prejudice Plaintiff's Motion to Certify Class (Docket No. 7) and Plaintiff's Motion for Approval (Docket No. 8). Neither party filed written objections.

The Court agrees with the Magistrate Judge that the Court has subject-matter jurisdiction over Plaintiff's claim, that Plaintiff has alleged facts sufficient to state a claim and that Plaintiff has failed to present preliminary facts that he is similarly situated to the putative class members. Accordingly, the Court **ADOPTS** the findings of fact and conclusions of law

of the Magistrate Judge as those of the Court. In light of the foregoing, it is **ORDERED** that Defendant's Motion to Dismiss (Docket No. 12) is **DENIED**.

It is further **ORDERED** that Plaintiff's Motion to Certify Class (Docket No. 7) and Plaintiff's Motion for Approval (Docket No. 8) are **DENIED WITHOUT PREJUDICE**.

SIGNED this 25th day of September, 2017.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE